

1 JAMES ATTRIDGE [SBN NO. 124003]  
2 Business Trial Lawyer  
3 The Fox Plaza, Suite 1204  
1390 Market Street  
3 San Francisco, CA 94102  
Telephone: (415) 552-3088  
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5 Attorney for Plaintiff  
ONEBEACON INSURANCE COMPANY  
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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

ONEBEACON INSURANCE COMPANY,  
Plaintiff(s),  
v.  
HAAS INDUSTRIES, INC.,  
Defendant(s).

Case No: C-07-3540 BZ (MEJ)

**DECLARATION OF JOHN GIBBS IN  
RESPONSE TO DEFENDANT'S  
OPPOSITION TO PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT OR, IN THE  
ALTERNATIVE, FOR PARTIAL  
SUMMARY JUDGMENT**

Date: April 2, 2008  
Time: 10:00 a.m.  
Courtroom: Courtroom G

I, JOHN GIBBS, declare and state:

1. I am presently self employed as the principle of Gibbs Transportation  
Consultants, Inc. I know the following of my own personal knowledge and if called upon to do  
so, could and would competently testify thereto.

2. I have recently retired from my position as Director of Claims and Loss  
Prevention for FedEx Ground. Prior to that I held similar positions for 22 years at Watkins  
Motor Lines and Southeastern Freight Lines. I am a member of the board of directors and  
former Chairman of the Transportation Loss Prevention and Security Association. In the course  
of my career, I have made it a practice to remain apprised of the practices of my competitors.

3. The statement in the Declaration of Carmen Holster that "it has been the industry

1 practice for a motor carrier undertaking interstate cargo transportation to limit its liability for loss  
2 of or damage to the cargo to .50 a pound, absent a declare value" is quite contrary to my  
3 experience. A .50 per pound limitation of liability is common among air freight carriers like  
4 FedEx, DHL and Airborne, but for motor carriers limitations vary a great deal.

5       4. Practically all major motor carriers are participants in the National Motor Freight  
6 Classification and incorporate the classification by reference into their bills of lading. The  
7 classification assigns a class rating number to each commodity running from 35 to 500, based  
8 upon its value and shipping characteristics. The higher the class rating, the higher the freight  
9 charge. For many commodities, the shipper is permitted to assign a lower class rating in  
10 exchange for a limitation of liability. These limitations run the gamut from .10 a pound for used  
11 machinery to upwards of \$25.00 per pound for sophisticated equipment. An example is attached  
12 as Exhibit 5.

13       5. When class rates are not applied, most carriers rely upon limitations of liability  
14 which are contained in their tariffs, which are normally posted on the internet. Again, based  
15 upon the value and risk of what is being transported, as well as upon the competition, these  
16 limitations vary from very high to very low.

17       6. Simply put, given the wide variety of commodities transported in interstate  
18 commerce, there is no industry standard. Canada has adopted a base rate liability system with a  
19 standard limitation of \$2.00 a pound. Proposals by the American Trucking Associations and  
20 others have called for a standard base rate limitation but have yet to be enacted.

21       I declare under penalty of perjury under the laws of the United States of America that the  
22 foregoing is true and correct.

23       Executed on this 19<sup>th</sup> day of March, 2008, at Orlando, Florida.

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/s/

JOHN GIBBS

## **EXHIBIT 5**

# NMF 100-Q

ICC NMF 100-Q  
FMC-F-28

APSC 30  
ATC 28  
Cal PUC 32  
PUC Colo 27  
Conn PUC-MF 28  
GPSC 27  
IPUC 28  
MF-ILL CC 29  
IMCA TR-28

Ia DOT 28  
KCC 29  
KY DOT 28  
LPSC 28  
MDT Man 28  
MF-PSC Md 28  
MDPU No. 5  
MPSC-NMF 100-Q  
MTRB 28

MC 28  
Div OT Mo 28  
Mont PSC 27  
NPSC 28  
PSCN 28  
NH DOS 28  
PUCNJ 28  
SCCNM 28  
DOT-NY-MT 27

NCUC 27  
NDPSC 28  
PUBNS 27  
PUCO-NMF 100-Q  
CC Okla 28  
PUC Ore 27  
Freight Pa-PUC 31  
PTCB 28  
RIDPU 5

PSCSC 29  
SDPUC 27  
TPSC 28  
RCT 29  
PSCU 30  
MF-VCC 28  
WN T 27  
MF-PSC-W Va 30  
Wyo PSC 27

(See page 2 for cancellations)

## NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC., AGENT

### CLASSES AND RULES

APPLYING ON  
FREIGHT TRAFFIC COVERED BY TARIFFS  
GOVERNED BY THIS CLASSIFICATION  
AS SUCH TARIFFS MAY PROVIDE

# NATIONAL MOTOR FREIGHT CLASSIFICATION

ISSUED APRIL 4, 1990

EFFECTIVE MAY 5, 1990  
(Except as otherwise provided herein)

ISSUED BY

MARTIN E. FOLEY, Issuing Officer  
2200 Mill Road  
Alexandria, VA 22314

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## PARTICIPATING INTERSTATE CARRIERS — Continued

@Carrier "Alpha" Code	CARRIER	Cert- ificate or Docket No. MC
VANK	VAN WYK FREIGHT LINES, INC., Grinnell, IA	121661
VKFL	VANDER KOOI FREIGHT LINE, Dennis Smit, d/b/a, Hullia, IA	39904
VNTA	VANTAGE TRANSPORT, INC., Versailles, OH	161795
VASH	VASHON AUTO FREIGHT CO., Vashon, WA	33915
VAUG	VAUGHT TRUCK LINE, INC., Hiawatha, KS	86099
VGAS	VEGAS TRUCKING CO., Las Vegas, NV	113981
VEZA	VENEZIA HAULING, INC., Limerick, PA	155348
VENT	VENTURA TRANSFER COMPANY, Long Beach, CA	7523
VEXP	VENTURE EXPRESS, INC., Nashville, TN	151894
VFLS	VICTORY FREIGHT LINES, INC., Pell City, AL	99653
VIKN	VIKING FREIGHT SYSTEM, INC., San Jose, CA	121835
VIAJ	VINCENT, ALVA JAY, Berlin, NY	99285
VINC	VINCI'S EXPRESS, INC., Woodbine, NJ	32505
VOLP	VOLPE EXPRESS, INC., Norristown, PA	23550
VOLT	VOLUNTEER EXPRESS, INC., Nashville, TN	121699
VFLI	VULCAN FREIGHT LINES, INC., Birmingham, AL	140928
WADS	WADSWORTH AND REILLY EXPRESS, INC., Washington Mills, NY	83151
WAGN	WAGNER FREIGHT LINES, INC., Chattanooga, TN	121158
WAGS	WAGNERS SERVICE, INC., Springfield, OH	60063
WAJR	WAJER, P., & SONS EXPRESS CO., INC., Webster, MA	58946
WALD	WALDRON TRUCK LINE, Frederick M. Jacobs, d/b/a, Fort Smith, AR	98187
WKRO	WALKER TRUCKING CO., Columbus, OH	164958
WALL	WALL TRUCK LINE, INC., Holden, MO	547
WTAP	WALLACE TRANSPORT, Planada, CA	135803
WCAF	WALLACE-COLVILLE MOTOR FREIGHT, INC., Spokane, WA	1924
WLAK	WALLACK FREIGHT LINES, INC., Copiague, Long Island, NY	106222
WMES	WALSH MESSENGER SERVICE, INC., Garden City Park, NY	121454
WATS	WALSH TRUCKING SERVICE, INC., Massena, NY	29643
WARH	WAR-HUNT TRUCKING COMPANY, INC., Allentown, PA	119875
WARD	WARD TRUCKING CORP., Altoona, PA	65916
WNTN	WAREHOUSE & TERMINAL CARTAGE CO., Bridgeview, IL	135395
WNTB	WARNER TRANSPORT COMPANY, Belding, MI	188537
WNDS	WARNER TRUCKING, INC., Belding, MI	97457
WCFL	WARREN COUNTY FREIGHT LINE, INC., McMinnville, TN	121677
WART	WARREN TRANSPORTATION CO., Hayward, CA	121472
WRRM	WARREN TRUCKING CO., INC., Long Beach, CA	119389
WRRS	WARRIOR SERVICES, INC., Secaucus, NJ	166550
WTHC	WASATCH TOTAL CARGO, INC., Salt Lake City, UT	206324
WTRV	WATERVILLE EXPRESS, Thurston E. Browne, d/b/a, Waterville, NY	107472
WKSH	WATKINS AND SHEPARD TRUCKING, INC., Missoula, MT	178957
WWAT	WATKINS MOTOR LINES, INC., Lakeland, FL	95540
WMXP	WATROUS MOTOR EXPRESS, INC., Syracuse, NY	114631
WBFL	WATSON, BILL, FREIGHT LINE, James G. Watson and Marsha B. Watson, d/b/a, Estes Park, CO	99004
WCMS	WEIR-COVE MOVING & STORAGE CO., Weirton, WV	76262
WELT	WELLING TRUCK SERVICE, INC., Reserve, IL	38403
WELS	WELLS CARGO, INC., Reno, NV	43269
WLXP	WELLS EXPRESS, INC., Kearny, NJ	42138
WVAF	WENATCHEE VALLEY AUTO FREIGHT, Wenatchee, WA	42139
WEBE	WEST BEND TRANSIT & SERVICE COMPANY, West Bend, WI	44469
WSED	WEST 8 DELIVERY SERVICE, INC., Denver, CO	115716
WEEP	WEST END EXPRESS, Richard L. Starks, Jr. and Phyllis Starks, d/b/a, Naturita, CO	121257
WESM	WEST MOTOR FREIGHT, INC., Boyertown, PA	21866
WTXE	WEST TEXAS EXPRESS, Joe Washington Roberts, d/b/a, El Paso, TX	150391
WEWT	WEST WORLD TRANSPORTATION CO., INC., Los Angeles, CA	95838
WTOS	WESTERN AUTO SUPPLY COMPANY - Transportation Division, Kansas City, MO	168431
WCTG	WESTERN CARTAGE, INC., Seattle, WA	121508
WCUS	WESTERN COURIER SERVICE, Sandra Sutton, d/b/a, Reno, NV	194907
WSDS	WESTERN DELIVERY SERVICE, INC., Denver, CO	165563
WKXQ	WESTERN KANSAS XPRESS, INC., Wichita, KS	143112
WMEI	WESTERN MARINE EXPRESS, INC., J & J Webster, Inc., d/b/a, City of Industry, CA	193412
WEMF	WESTERN MOTOR FREIGHT, INC., Oklahoma City, OK	121673
WETC	WESTERN TRANSPORTATION COMPANY, Chicago, IL	52752
WTTH	WESTERN TRANSPORTATION SERVICES, Jerry J. Feliciello, d/b/a, West Sacramento, CA	192564
WTPB	WESTERN TRANSPORTATION, INC., Lamar, CO	147217
WMFR	WESTWAY MOTOR FREIGHT, INC., Commerce City, CO	99234
WETZ	WETZ, R. O., TRANSPORTATION, Roy O. Wetz, d/b/a, Marietta, OH	31438
WHEH	WHEEL HORSE TRANSPORT, INC., South Bend, IN	173942
WLRF	WHEELER FREIGHTWAYS, Las Vegas, NV	106679
WHXP	WHITE EXPRESS CO., INC., THE, Brooklyn, NY	3845
WHTR	WHITE'S TRANSPORTATION, Francis D. White, d/b/a, Lockport, NY	61479

## RULES

### ITEM 360—Concluded

**Sec. 3. Inspection of Property.** When carrier's agent believes it is necessary that the contents of packages be inspected, he shall make or cause such inspection to be made, or require other sufficient evidence to determine the actual character of the property. When found to be incorrectly described, freight charges must be collected according to proper description.

#### Sec. 4. Delivery of Shipments on Order Bills of Lading:

**Sec. 4 (a).** The surrender to the carrier of the original Order Bill of Lading, properly endorsed is required before the delivery of the property; but, if such bill of lading be lost or delayed, **Sec. 4 (b)** will govern.

**Sec. 4 (b).** The property may be delivered in advance of the surrender of the bill of lading upon receipt of a certified check, money order or bank cashier's check (or cash at carrier's option) by the carrier's agent for an amount equal to one hundred and twenty-five percent of the invoice or value of the property, or at carrier's option, upon receipt of a bond, acceptable to the carrier, in an amount twice the invoice or value of the property, or a blanket bond may be accepted when satisfactory to the carrier as surety, amount and form. Amounts of money deposited by certified check, money order, bank cashier's check or in cash shall be refunded in full: Immediately upon surrender of bill of lading properly endorsed or when the carrier has received a bond, acceptable to the carrier, in an amount twice the invoice or value of the property.

**Sec. 5. Insurance Against Marine Risk:** The cost of insurance against marine risk will not be assumed by the carrier unless so provided specifically, in its tariffs.

### ITEM 365

#### STRAIGHT BILL OF LADING—CONTRACT TERMS AND CONDITIONS

The contract terms and conditions set forth on pages 266 and 267 of the Classification are applicable for all shipments moving on the:

- (1) STRAIGHT BILL OF LADING—SHORT FORM as illustrated on page 271 of the Classification.
- (2) STRAIGHT BILL OF LADING as illustrated on pages 272 and 275 of the Classification.
- (3) SHIPPER-PROVIDED SHORT FORM BILL OF LADING as illustrated on pages 273 and 274 of the Classification.

### ITEM 381

#### CANCELLATION OF ITEMS

As this classification is supplemented, numbered items with letter suffixes cancel (except as otherwise specifically indicated) correspondingly numbered items in the original classification or in a prior supplement. Letter suffixes will be used in alphabetical sequence starting with A. Example: Item 4000-A cancels item 4000, and item 3600-B cancels item 3600-A in a prior supplement, which, in turn, cancelled item 3600.

### ITEM 420

#### CLASSIFICATION OF ARTICLES—GENERAL

**Sec. 1.** Numbers 35 to 500 provided for in this classification under columns headed 'CLASSES', appearing on pages 276 to 666 of this classification, and as amended, are the classes assigned to the articles described in connection therewith and refer to columns of class rates headed by the same respective numbers in the class rate tariffs governed by this classification. Classes 37.5, 77.5 and 92.5 refer also to rates published for classes 37½, 77½ and 92½, respectively, in class rate tariffs governed by this classification.

The progression of classes in this classification is from 35 (lowest) to 500 (highest).

**Sec. 2.** Classes shown in the class columns opposite the description of articles will apply in conjunction with the rate tariff designated as being governed by this classification.

**Sec. 3.** When '0' is shown in the class column, it means that such articles are subject to the rates and regulations of individual carriers.

**Sec. 4.** A tariff of rates may be made subject to all of the classes published in this classification or may be made subject to either the less than truckload classes or the truckload classes, provided the tariff of rates clearly indicates which classes are to be applied in connection with the rates published therein.

**Sec. 5.** Where a tariff of rates does not provide a rate for the class shown opposite the description of articles herein and no other provision is made in that tariff as to application of such class, apply the rate for the next higher class for which rates are shown in such tariff.

### ITEM 421

#### CLASSIFICATION BY ANALOGY

The class for any article not provided for, either by its specific name or embraced in an NOI item, shall be the class provided in the classification for an article which, in the carrier's judgement is the most closely analogous. In such cases, the classification description and the item number utilized will be entered on carrier's freight bill and, further, such facts must be reported by the carrier to the Director of Classification Development, National Classification Committee staff, in order that the establishment of specific provisions may be considered by the Committee. This rule will not apply in connection with classes in exceptions to this classification nor rates in commodity tariffs.

